

Please see Exhibit B which provides the appropriate markings of the deleted and added claims section, so as to make Applicant's request clear.

#### **Remarks**

The Abstract has been rewritten to be one paragraph; it is written to the general public (without legalese), and it is between 50 to 150 words long. The Claims are submitted to be patentable over the prior art of record.

In response to each of the items in Office Action, dated 11/16/2004, Applicant states as follows:

(1) To item number 1, Applicant has rewritten the Abstract to make it written to the general public and does not contain phrases such as "said" or "means." The Abstract was drafted so as to describe the disclosure broadly but sufficiently so as to assist a reader in deciding whether there is a need for consulting the full patent text for details. It is restricted to between 50 to 150 words. It no longer has such words as, "The disclosure concerns....." or "The disclosure defined by this invention....." Applicant prays that it is now acceptable to the Patent and Trademark Office.

(2) In response to items 2 through 4 of the Patent and Trademark Office response, Applicant has re-written the Claims so as to overcome the objections of the Patent Office in regard to the Claims' structure, the 112 objection and the 102 objection.

With respect to novelty, the presence of even a minor or insubstantial difference between the claimed invention and the prior art reference will result in a conclusion of novelty. PPG Indus., Inc. v. Guardian Indus. Corp., 75 F. 3d 1558, 1566 (Fed. Cir. 1996). Anticipation requires the presence in a single prior art disclosure of each and every

element of a claimed invention. Glaverbal Societe Anonyme v. Northlake Marketing & Supply, Inc., 45 F. 3d 1550, 1554 (Fed. Cir. 1995). The re-written Claims are drafted in a way to overcome this rejection.

Specifically, U.S. Patent No. 6,254,472 to Meyn does depict sensors, a plc, and a cable/bus communication cable. Meyn, unlike the present invention, does not disclose the metal flag(s) attached to the shackle which allow for the sensors to much more easily pick up the chicken bird and feet. Meyn does not depict an inspection button. So, there is novelty between the present invention and Meyn.

As to U.S. Patent No. 4,150,374 to Brooks, Brooks depicts sensing devices to detect a whole bird, a receiver device of the sensors and a gating device. Brooks' purpose is to count chickens; the primary reason for Brooks' invention is to use the sensor detection to count the whole chicken bird. Brooks, unlike the present invention, does not depict the plc, the metal flags, the inspection reject button, and the data/bus communication cable. Therefore, there is novelty between Brooks and the present invention.

In US 2003/0139130 A1 to Steffler et al., there is shown sensing devices, a plc and an inspection station (but not an inspection reject button). In the present invention, as opposed to Steffler, there are metal flags, an inspection reject button that interfaces with the plc, and a data/bus communication cable. Again, there is novelty between the present invention and Steffler.

(3) Responding to item 5 and associated code section 35 U.S.C. 103 (a), Applicant points to the leading case in this area, the Graham case. In Graham, the Court recognized that there are indications of non-obviousness (referred to as "secondary

considerations”). Those are: commercial success, long felt but unresolved need, failure of others, praise, and unexpected results. Graham v. John Deere, 383 U.S. at 17 – 18. The Federal Circuit has instructed that these considerations must be considered in every case, both by the courts and PTO. Custom Accessories, Inc. v. Jeffrey-Allan Industries, Inc., 807 F. 2d 955 (Fed. Cir. 1986).

First, there is no one patent cited that cites all the elements listed in Applicant’s disclosure and the newly written claims.

Second, the Patent and Trademark Office has to combine, in some cases, four patents (or an application) in order to try to show obviousness. The Office combines Brook, and Steffler and Meyn and van den Nieuwelaar and none show all the elements claimed in the current application, as amended. The flags are not depicted in any of the patents or application and none show all the elements as claimed and disclosed. The need to combine so many patents, by definition, shows un-obviousness, rather than obviousness.

Third, there are many patents the PTO cites in this area, so, therefore, it must be true that a small step forward with the combination of elements, including the flags placed on a shackle for a better ability to sense the passing of the chicken and associated feet should be regarded as significant.

Fourth, the prior art cited by the PTO lacks any suggestion that the references should be modified so as to meet the Claims.

Fifth, as will be evident in the Affidavit attached hereto, the current invention is being adopted by others.

Sixth, as will be seen in the Affidavit attached hereto, the current invention is being recognized in the field to set a standard in its combination of elements.

Seventh, the invention, as a whole, in its combination of elements, is greater than the many patents cited to try to get to the level of the current invention.

Last, the PTO must, as previously stated, analyze secondary considerations to determine un-obviousness. The present invention, with its combination of elements, *satisfies a long felt need* and is already a *commercial success* as evident by the Affidavit of Allan Todd Berry. The Affidavit of Allan Todd Berry states, in part:

“The system is described in detail in the patent application but the features, taken together as a whole, are not outlined in any one patent that was part of the response from the Patent Office. The elements of the PLC, the sensors, the data bus communications, the medal flags, and the inspection interface button, together, are not disclosed in any one patent based on my review of all the patents in the response from the Patent Office.

I have been working in the chicken process industry for more than 20 years.

It is my opinion that the invention is a *commercial success* because we have already sold 18 systems incorporating my invention, and it is currently used in production. Another sign of *commercial success* is the overwhelming interest I have received through phone calls from poultry companies wanting to know more about the system. I have traveled to numerous companies across the United States to give presentations and give quotes for the system pricing. I continue to receive telephone calls on a daily basis requesting printed material on the system. In addition, the invention is being considered by USDA officials to use as the basis for writing the new Directive regulations on the process of determining quality of chicken paws.

In January of 2002, China began to put restrictions on the quality of the chicken paws they were receiving from the United States. Since then, many poultry processors ceased producing the paws because there was not a viable method for determining the quality of the feet. The invention of the current patent application, in conjunction with the USDA inspectors input, can accurately determine which paws are acceptable and which are not. Therefore, my invention *satisfies the need long felt by the poultry industry*. It is the only system readily available that meets the criteria of the existing FSIS Directive 6210.2 as it is written.” (emphasis supplied)

Applicant respectfully requests that the PTO carefully consider Applicant’s response and the Affidavit herein supplied and realize that even a seemingly minor change can produce unexpected results, result in adoption by others, and be determined

as unobvious. *See, Eibel Products Co. v. Minnesota & Ontrario Paper Co.*, 261 U.S. 45 (1923).

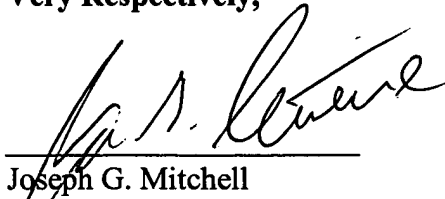
Applicant has shown that the present invention is unobvious to one skilled in the art. There are *structural* differences in the present invention and those cited by the PTO. Applicant believes the present invention is unobvious to one skilled in the art and respectively requests the PTO agree.

(4) In response to item 6, Applicant states that the patents cited do not prevent Applicant from obtaining a patent for his invention.

### **Conclusion**

For all the foregoing reasons, Applicant submits that the specification, drawings, and claims are now in proper form, and that the claims all define patently over the prior art. Therefore, Applicant submits that his patent application is now in condition for allowance, which action he respectively requests.

**Very Respectively,**



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